

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH DOWNING,

Plaintiff,

v.

OSVALDO FUMO, et al.,

Defendants.

Case No. 2:23-cv-00419-ART-NJK

ORDER GRANTING PLAINTIFF
LEAVE TO AMEND COMPLAINT

This case involves claims by *pro se* Plaintiff Joseph Downing against criminal defense attorneys, a law firm, and firm staff members for legal malpractice and ineffective assistance of counsel, purportedly brought under 28 U.S.C. § 1983. (ECF No. 11.) Pending before the Court is Magistrate Judge Koppe’s Report and Recommendation (“R&R”) (ECF No. 14) and Plaintiff’s objection (ECF No. 15). For the reasons stated below, the Court rejects the R&R and grants Plaintiff additional time to file a second amended complaint.

I. Review of Report and Recommendation

Under the Federal Magistrates Act, a Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by [a] magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, the court is required to “make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). A court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

In the R&R, Judge Koppe explains that, after screening Plaintiff’s amended complaint on July 27, 2023, the Court determined that the complaint failed to

1 state a federal cause of action and otherwise failed to establish subject matter
2 jurisdiction because it contained state law claims. (ECF No. 14 at 1, ECF No. 10
3 at 2-3.) The Court ordered Plaintiff to file a second amended complaint by August
4 31, 2023, and warned that failure to comply may result in dismissal of the case.
5 (ECF No. 10 at 4.) The Court then extended that deadline to October 2, 2023.
6 (ECF No. 13.) Because Plaintiff failed to file a second amended complaint or seek
7 further extension, the R&R recommends dismissal without prejudice.

8 Plaintiff filed an objection, stating that he did file a second amended
9 complaint which cured the jurisdiction issue and other deficiencies as ordered
10 but never received a copy of it being filed. (ECF No. 15.) There does not appear to
11 be a record of Plaintiff's second amended complaint. Plaintiff explained that he
12 has had issues with legal mail and law library access. (ECF No. 15.) Because
13 Plaintiff has had difficulties filing an amended complaint, the Court grants
14 Plaintiff additional time to amend his second amended complaint.

15 **II. Conclusion**

16 The Court therefore orders that Judge Koppe's R&R (ECF No. 14) is
17 rejected. The Court grants Plaintiff an additional 30 days to file a second amended
18 complaint correcting the deficiencies noted above and identified by Judge Koppe
19 in the screening order (ECF No. 10). Plaintiff has until November 23, 2024 to file
20 a second amended complaint. The amended complaint must be complete in itself
21 without reference to any prior pleading and must sufficiently allege each claim
22 and the involvement of each Defendant.

23
24 DATED THIS 25th day of October 2024.

25
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27 ANNE R. TRAUM
28 UNITED STATES DISTRICT JUDGE